

TITLE 1: GOVERNMENT AND ADMINISTRATION
DIVISION 2: DEPARTMENTS, OFFICES, COMMISSIONS
Chapter 27: Administrative Hearings; County Hearing Officer.
Sections:

12.270	Agency Defined.
12.271	County Hearing Officer.
12.272	Hearing Officer Authority.
12.273	Hearing Officer Qualifications.
12.274	Use of Hearing Officer by Other Agencies.
12.275	State Hearing Officer.
12.276	License Defined.
12.277	Application Defined.
12.278	Hearing Subject Matter.
12.279	License Application; Informal Hearing.
12.2710	License Application; Formal Hearing.
12.2711	Action Against License; Hearing.
12.2712	Form: Notice to Show Cause.
12.2713	Service of Notice; Answer.
12.2714	Contents of Answer.
12.2715	Amended Notice to Show Cause.
12.2716	Notice of Hearing.
12.2717	Continuances.
12.2718	Prehearing Conference.
12.2719	Subpoenas; Witnesses.
12.2720	Conduct of Hearing.
12.2721	Proceedings Recorded.
12.2722	Testimony; Evidence.
12.2723	Official Notice.
12.2724	Agency Hearing.
12.2725	Hearing Officer Recommended Decision.
12.2726	Agency Action.
12.2727	Decision; Conditions.
12.2728	Reconsideration.
12.2729	Petition; Waiver.
12.2730	Action on Petition for Reconsideration.

12.270 Agency Defined.

As used in this chapter, "agency" means the County of San Bernardino, or any board, commission, committee or department thereof, with the exception of the Planning Commission, and includes any local public agency which contracts with the County pursuant to Section 12.274.

Adopted Ordinance #1709 (1972);

12.271 County Hearing Officer.

There is in the government of the County of San Bernardino the office of County Hearing Officer. The duties of the office are to conduct hearings for the County or any agency thereof with the exception of the Planning Commission.

Adopted Ordinance #1709 (1972);

12.272 Hearing Officer Authority.

When any law, ordinance, rule or regulation provides that a hearing be held or that findings of fact or conclusions of law be made by an agency, a County Hearing Officer may be appointed by the Board of Supervisors to conduct such hearing. The appointment of such a hearing officer is discretionary with the Board of Supervisors even though other provisions of this Chapter are made mandatory by another section of this Code, which refers to the Chapter and states that the procedures of this Chapter must be used. Unless made mandatory by another section of this Code, the procedures of this Chapter may be made applicable to a proceeding at the sole discretion of the Board of Supervisors. A hearing officer, so appointed, is authorized to issue subpoenas, to administer oaths, to rule on questions of law and the admissibility of evidence, to receive evidence to prepare a record of the proceedings, to prepare recommended findings, conclusions and a decision, and to submit such record, recommended findings, conclusions, and decision to the agency.

Adopted Ordinance #1709 (1972); Amended Ordinance #3058 (1986);

12.273 Hearing Officer Qualifications.

The County Hearing Officer or any deputy or assistant hearing officer shall be an attorney-at-law having been admitted to practice before the courts of the State of California at least five (5) years prior to this appointment.

Adopted Ordinance #1709 (1972);

12.274 Use of Hearing Officer by Other Agencies.

Any local public agency within the County of San Bernardino may contract with the County to employ the services of the County Hearing Officer. Reimbursement to the County shall be on a pro rata basis of actual cost to the County in providing the service, including salaries, overhead and any travel expense. An agency contracting with the County under this section is authorized to conduct its hearings in accordance with the provisions of this chapter. If an agency has adopted its own rules of procedures, such rules may be followed.

Adopted Ordinance #1709 (1972);

12.275 State Hearing Officer.

The County of San Bernardino or other local public agency within the County may contract with the Office of Administrative Hearings of the State of California pursuant to California Government Code Section 27727. A State hearing officer assigned to hear a matter under that section and the provisions of this chapter shall conduct proceedings pursuant to this chapter.

Adopted Ordinance #1709 (1972);

12.276 License Defined.

As used in this chapter, "license" means any right, authority, license, permit or privilege which an agency may grant or issue or which an agency has granted or issued.

Adopted Ordinance #1709 (1972);

12.277 Application Defined.

As used in this chapter, "application" means any request, whether by formal application or informal request, for the granting of a license as defined in Section 12.276; provided, however, that an agency may require the completion and filing of a formal application.

Adopted Ordinance #1709 (1972);

12.278 Hearing Subject Matter.

An agency may apply the provisions of this chapter to proceedings regarding:

- (a) Granting, denial, revocation, suspension or other action regarding a license.
- (b) Enforcement of a duty required by law.
- (c) Appeal from a decision of an officer, employee or department or agency.
- (d) Personnel matters, including disciplinary action; provided however that hearings conducted by or for the

San Bernardino County Civil Service Commission shall be conducted pursuant to the Personnel Rules adopted by the Board of Supervisors.

(e) Any other matter regarding which any law, ordinance, rule or regulation provides that a hearing be held or that findings of fact or conclusions of law be made by an agency.

Adopted Ordinance #1709 (1972);

12.279 License Application; Informal Hearing.

When an application for license is filed with an agency, it shall be reviewed by the department or departments having jurisdiction over the subject matter of the application. Such departments shall report to the agency any fact or condition pertinent to the granting or denial of the license for which application is made. If the agency denies the license, the applicant shall be notified and may file a written appeal within fifteen (15) days after the date on which the notice of denial was mailed. The notice shall inform him of his right to appeal and to request a hearing pursuant to the provisions of this chapter and of his right to be represented by counsel at his own expense.

If the applicant files an appeal, the agency may schedule an informal hearing to permit the applicant to be heard. In the alternative, upon receiving applicant's notice of appeal, the agency may institute formal proceedings in accordance with Section 12.2710 of this Code.

At the conclusion of an informal hearing, the agency may take such action as the record indicates and may affirm, reverse or amend its prior action. If the agency's decision is adverse to the applicant, and applicant fails to request a formal hearing as provided herein, he shall be deemed to have waived his appeal; it shall be dismissed; and the action of the agency shall be final.

The applicant may file a written request for a formal hearing for the purpose of presenting evidence regarding his application. Such request shall be filed no later than five (5) days after any informal hearing held hereunder. Any request for a formal hearing shall be accompanied by any fee established by the agency for such filing. The agency may, upon a showing of good cause, waive such fee. Upon the receipt of a valid request for a formal hearing, the agency shall commence the procedure for a formal hearing pursuant to Section 12.2710.

The notice provided for herein shall be in substantially the following form:

Adopted Ordinance #1709 (1972);

[Agency]

TO: [Name of Applicant] Date: _____

You are hereby notified that the [agency] has denied your application for [type of license or permit] for the following reason or reasons:

[List reasons in nontechnical language]

You are further notified that you have a right to appeal from this decision by filing a letter, or other written document, indicating your appeal with [agency and agency address] within fifteen (15) days of the above date. The [agency] may schedule an informal hearing to consider your appeal. In the alternative, the [agency] may initiate a formal hearing for the purpose of taking evidence regarding your application. You have the right to request a formal hearing to present evidence by filing a written request therefor accompanied by a filing fee of \$ _____. A request for a formal hearing shall be filed no later than five (5) days after any informal hearing. You have the right to notice of any hearing and the right to appear and be represented by counsel at your own expense.

Adopted Ordinance #1709 (1972);

12.2710 License Application; Formal Hearing.

A formal hearing to determine whether a license should be granted, issued or renewed shall be initiated by filing a notice to show cause why such license should be issued. [If the renewal is to be issued merely on the payment of an additional fee, without further showing of entitlement to an existing holder of a license, the proceeding shall be initiated in accordance with Section 12.2711.] The notice shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought by the respondent.

Adopted Ordinance #1709 (1972);

12.2711 Action Against License; Hearing.

A hearing to determine whether a license should be revoked, suspended, limited or conditioned shall be initiated by filing a notice to show cause why such action should not be taken.

The notice shall be a written statement of charges, which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that respondent will be able to prepare his defense. It shall specify the statutes, ordinances, rules or regulations which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes, ordinances, rules or regulations.

If the agency issuing the notice concludes that the information in its possession is of a substantial nature and that the matter involves imminent danger to the health, safety and welfare of the people, it may issue with the notice to show cause an interim order regarding such license pending any hearing on the notice.

Adopted Ordinance #1709 (1972);

12.2712 Form: Notice to Show Cause.

A notice to show cause issued pursuant to Sections 12.2710 or 12.2711 shall be substantially in the following form:

In Re [Name of applicant, licensee or other respondent], Respondent. NOTICE TO SHOW CAUSE

If respondent fails to file an answer, the allegations in the notice to show cause shall be deemed to be true. The agency may take such action as it deems appropriate upon the facts so admitted and other information which has been submitted to it. The agency need not, but may, schedule a hearing without notice to respondent. Nothing herein shall be construed to deprive the respondent of the right to make a showing by way of mitigation.

An answer shall be substantially in the following form:

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO
[or other agency]

In Re [Name of applicant, licensee or other respondent], ANSWER TO NOTICE TO SHOW CAUSE
Respondent.

Respondent answers the Notice to Show Cause, as follows:

[Enter here any denial, objection, admission, request, new matter or facts regarding mitigating circumstances. See: San Bernardino County Code Section 12.2714.]

Date: _____

(Signature of Respondent or Attorney)

(Address)

Adopted Ordinance #1709 (1972);

12.2715 Amended Notice to Show Cause.

Before a matter is submitted for decision, the agency may file or permit the filing of an amended or supplemental notice to show cause. Respondent shall be served with a copy thereof. If new charges are included, the agency shall afford a reasonable opportunity for respondent to prepare a defense thereto, and respondent may file an amended answer.

Adopted Ordinance #1709 (1972);

12.2716 Notice of Hearing.

If respondent has filed a timely answer, the agency or the hearing officer shall deliver or mail a notice of hearing to all parties at least ten (10) days prior to the hearing. The notice to respondent shall be substantially in the following form that may include other information:

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO
[or other agency]

In Re [Name of respondent], NOTICE OF HEARING
Respondent.

TO: [Respondent and other parties.]

You are hereby notified that a hearing will be held before [name of agency or designation of hearing officer] at [place of hearing] on the _____ day of _____, 19____, at the hour of _____m. upon the charges made in the notice to show cause served upon you. You may be present at the hearing, may be, but need not be, represented by counsel, may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [appropriate office of agency or hearing officer].

Date: _____

(Signature and title of person executing Notice.)

Adopted Ordinance #1709 (1972);

12.2717 Continuances.

The agency may grant continuances. When a hearing officer has been assigned to such hearing, no continuance may be granted except by him. A party requesting a continuance may be required to make a showing of good cause. Adopted Ordinance #1709 (1972);

12.2718 Prehearing Conference.

The agency or a hearing officer may require attendance of the parties at a prehearing conference. At such conference, the issues shall be reviewed and the parties shall be requested to submit all documentary evidence and to designate which items may be introduced without objection. Documents may be admitted into evidence, and any not admitted shall be marked for identification. The parties shall also be requested to enter stipulations into the record as to those matters upon which they agree. Notice of a prehearing conference shall be mailed to the parties at least ten (10) days prior to the time set for the conference. The notice shall set forth the requirements of this section.

Adopted Ordinance #1709 (1972);

12.2719 Subpoenas; Witnesses.

Before the hearing has commenced, the agency, or the assigned hearing officer in accordance with California Government Code Section 27721, shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum. After the hearing has commenced, the agency itself hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

If any person in proceedings before an agency disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the agency shall certify the facts to the Superior Court of the County to initiate proceedings pursuant to Sections 25170 - 25176 of the California Government Code.

Adopted Ordinance #1709 (1972);

12.2720 Conduct of Hearing.

Every hearing in a contested case may be conducted by the agency or may be referred to a hearing officer pursuant to this chapter. If the agency hears the case itself, it may appoint a hearing officer to preside at the hearing, rule on the admission and exclusion of evidence and advise the agency on matters of law. The agency itself shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of them to the Hearing Officer. When a hearing officer alone hears a case, he shall exercise all powers relating to the conduct of the hearing.

Adopted Ordinance #1709 (1972);

12.2721 Proceedings Recorded.

All proceedings shall be recorded by an electronic recording device. Any party may at his own expense provide for the taking of the testimony by a qualified phonographic reporter.

Upon payment of the requisite fees to the agency, the agency shall prepare a duplicate recording or a duplicate tape of the proceedings and a copy of any documentary evidence introduced into evidence and any pleading, notice, order, recommended decision or final decision or other paper relating to the case.

Adopted Ordinance #1709 (1972);

12.2722 Testimony; Evidence.

Oral evidence shall be taken only upon oath or affirmation.

Each party shall have these rights: to call and examine witnesses to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered on direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify on his own behalf, he may be called and examined as if under cross-examination, and the party calling him in this manner is not bound by the testimony elicited.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

Adopted Ordinance #1709 (1972);

12.2723 Official Notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

Adopted Ordinance #1709 (1972);

12.2724 Agency Hearing.

If the agency conducts the hearing, it shall render a written decision which shall include findings of fact, conclusions of law and decision.

Adopted Ordinance #1709 (1972);

12.2725 Hearing Officer Recommended Decision.

If a case is heard by a hearing officer, he shall prepare for the agency's consideration:

1. A resume of the testimony taken and other evidence presented.
2. Recommended findings of fact.
3. Recommended conclusions of law.
4. Recommended decision.

The hearing officer shall submit the original copies of the resume and the recommendations to the agency, and shall also serve a copy of each upon the complainant and the respondent. If any party is represented by an attorney, both the party and his attorney shall be served.

Adopted Ordinance #1709 (1972);

12.2726 Agency Action.

Upon receiving the resume and recommendations of the hearing officer, the agency may take action thereon without a hearing or may schedule a hearing for the purpose of hearing oral argument from the parties. If a party is represented by an attorney, only such attorney will be permitted to present argument for such party. At the conclusion of the hearing, the agency may take action or may submit the matter for consideration.

The agency may issue its decision without further hearing or notice to the parties and shall serve a copy of such decision upon the parties and their attorneys if represented by counsel. The agency may reopen the matter if not satisfied with the record and may order further proceedings, refer the matter to the same or different hearing officer, or hear additional evidence without a hearing officer. Any hearing after reopening shall be conducted on notice to the parties.

In its decision the agency may:

1. Adopt the recommendations of the hearing officer, or
2. Adopt the recommendations in part as a part of the agency's decision, or
3. Reject the hearing officer's recommendations and enter its own findings of fact, conclusions of law and decision based upon the record as set forth in the resume of testimony and documentary evidence.

Adopted Ordinance #1709 (1972);

12.2727 Decision; Conditions.

(a) The decision shall become effective fifteen (15) days after it is delivered or mailed to respondent or his attorney if represented by counsel, unless a petition for reconsideration has been filed within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision. An agency may make a probationary or conditional order in conjunction with a stay of execution, including an express condition that respondent comply with specified terms of probation.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to such officer after the decision has become effective.

(d) For good cause, the agency may, as a part of its decision, or as a condition of probation, order a respondent to reimburse the agency for costs incurred in conducting a proceeding under this chapter.

Adopted Ordinance #1709 (1972);

12.2728 Reconsideration.

Within fifteen (15) days following service of the agency's decision, a party may file with the agency a petition for reconsideration on one or more of the following grounds:

1. That the decision is contrary to law.
2. That the decision is contrary to the findings of fact.
3. That the decision is contrary to the conclusions of law.
4. That the findings of fact or conclusions of law are not supported by the evidence.
5. That the party has discovered evidence which with due diligence he could not have discovered before the time of the hearing.

The agency may order reconsideration on its own motion within fifteen (15) days after service of its decision.

The agency's authority to act upon a petition for reconsideration shall terminate at the expiration of thirty (30) days after the service of its decision. If no action has been taken regarding a petition within such thirty (30) day period, the petition shall be deemed denied.

Adopted Ordinance #1709 (1972);

12.2729 Petition; Waiver.

Any assertion, issue or point not raised in a petition for reconsideration shall be deemed to be waived by petitioner. If a petition for reconsideration asserts any factual matter contained in the record, the petition shall set forth the place in the record where such material may be found. If an allegation is based upon newly discovered evidence, an affidavit or declaration under penalty of perjury shall be filed setting forth such newly discovered evidence and the reason or reasons why such evidence could not be produced at the hearing. Any petition not in compliance with this provision may be summarily denied.

Adopted Ordinance #1709 (1972);

12.2730 Action on Petition for Reconsideration.

If a petition for reconsideration does not show good cause to reconsider the decision, the agency may deny the petition with or without a hearing. If a hearing is scheduled, the parties shall be limited to oral argument on the merits of the petition. The agency may grant reconsideration and review the matter on the same record or may schedule a hearing to take further evidence. The matter may be referred to a hearing officer, and if a hearing officer heard the case initially, he may be the same or a different hearing officer. If reconsideration is granted, the agency may affirm or modify its previous decision or enter a new and different decision on the record before it after reconsideration.

Adopted Ordinance #1709 (1972);